IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

RPFC.No. 92 of 2003(A)

MC.148/2002 of FAMILY COURT, KOZHIKODE
.....

PETITIONER/RESPONDENT

ALIKOYA E.P., S/O. ASSANKUTTY
HAZREEN MANZIL, KULANGARA PEEDIKA,
P.O.GURUVAYOORAPPAN COLLEGE,
KINASSERY, KOZHIKODE.

BY ADV. SRI.NIRMAL. S

RESPONDENTS: PETITIONER

E.C.SULAIKHA D/O. E.C.ABU,
KANDANKULANGARA VEEDU, KOVUVALLY AMSOM DESOM,
KODUVALLY P.O., KOZHIKODE.

BY ADV. SRI.P.SANJAY
SRI.M.MUHAMMED SHAFI

THIS REV.PETITION(FAMILY COURT) HAVING BEEN FINALLY HEARD ON 01/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J.

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R.P.(F.C).No.92 of 2003-E

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Dated this the 1st day of November, 2007

O R D E R

The revision petitioner is the respondent/husband in M.C.No.148/2002 who is under the orders to pay maintenance at the rate of Rs.1,000/- to the petitioner who is the former wife. The case of the petitioner/wife is that he illtreated her and that he was driven out of the house and that she is right now living with her parents and that she is not having sufficient means to maintain herself. According to her, the respondent is running a wholesale business in lemon at Palayam market at Kozhikode and is getting an income of Rs.25,000/- per month. She claimed maintenance at the rate of Rs.1,000/- per month and the court below allowed the same. On the other hand it is brought out that the revision petitioner again married another lady and that a child is born in the above marriage. It is also stated that he has got three children in the first marriage. The petitioner is the second wife. He has denied the allegation that he is running a business. According to him, as is brought out when he was examined before the court he is an employee in a lemon shop and after his work time in the shop he used to sell lemon by the side of the road. According to him he used to get a gunny bagful of lemon and by

selling it he would get about Rs.30 to 35/-, and from his employment he would get Rs.50/- per day.

2. I find that no objective evidence or supporting evidence has been adduced to establish the case that the revision petitioner is running wholesale business in lemon or that he is having a shop room in the market and that other persons are employed by him. In the circumstances, I find that the amount ordered to be paid as maintenance at the rate of Rs.1,000/- per month on the basis of the version of PW.1 that he is running wholesale business in lemon cannot be upheld. It is to be noted that the burden of proof is on the part of the petitioner. In the circumstances, I find that the amount ordered to be paid as maintenance is liable to be reduced. I find that it would be reasonable to award a sum of Rs.700/- per month as maintenance with effect from the date of the order of the court below, i.e. 02/04/2003. The revision petition is disposed of accordingly.

K.R.UDAYABHANU,
Judge

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